

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2994 of 2004
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANHARSINH @ MANOJ HARISINH YADAV

Versus

STATE OF GUJARAT

Appearance: MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 24.1.2004. By the said order, he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the detenu was also served with the grounds of detention.

In the grounds of detention, there is a reference about two pending criminal cases against the petitioner. Both these cases are registered for violation of the

Bombay Prohibition Act.

The detaining authority, after considering the aforesaid cases and after considering the statements of some witnesses, whose names have not been disclosed to the petitioner, has detained the petitioner as a 'bootlegger' under PASA. The said order is under challenge in this petition.

The learned Advocate for the petitioner submitted that the petitioner was dealing in foreign liquor and that itself cannot be said to be an activity which is against public order. It is submitted that, assuming that the petitioner has violated the law of the land, that is not a ground for detaining him under PASA by way of Preventive detention. The learned Advocate also further submitted that, at the time when the detention order was passed, the petitioner was already in judicial custody in connection with the offence at serial No.2. The authority has merely made some passing observations that on filing bail application, the petitioner will be released on bail and he will continue his activities again. The learned Advocate for the petitioner also submitted that there is nothing on record to show that even an application for bail is moved by the petitioner.

In this connection, the learned Advocate for the petitioner has relied upon the decision of the Apex Court in *Amritlal & Others v. Union Government and others*, AIR 2000 SC 3675, wherein the Apex Court has observed as under :-

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4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh v. District Magistrate, Dhanbad*, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in

this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... .."

Considering the aforesaid decision of the Apex Court, it cannot be said that the detaining authority has

reached satisfaction on the basis of cogent material, and the detaining authority has not stated as to on what basis it has reached the subjective satisfaction that even though the petitioner was already in judicial custody in connection with the offence at serial No.2, he will be released on submitting an application for bail and continue his activities again. There is nothing on record to show that even an application for bail is moved by the petitioner. Under these circumstances, this petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

27th July, 2004 (P.B. Majmudar, J.)

(apj)